

Blue Slips

One way in which senatorial courtesy has manifested itself is something called the “blue slip.”³⁵ This is a device used by the Senate Judiciary Committee to communicate with the home-state Senators about a nomination to the U.S. courts of appeal or district courts, or to be a U.S. marshal or U.S. attorney. When a nominee is referred to the committee, the committee sends a letter (typically on light blue paper) asking the two home-state Senators to take a position on the nomination. The Senators check off the appropriate box on the sheet — either approve or disapprove — and return the paper to the Judiciary Committee.

The blue slip process is used only by the Senate Judiciary Committee — no other Senate committee uses it for other kinds of nominations. The practice of using blue slips dates back to at least 1917.³⁶ Since mid-2001, the status of blue slips for each judge nominated have been publicly available on the Web.³⁷

It is a matter of some debate how important blue slips are in the confirmation process. The blue slip practice is not a formal part of the Judiciary Committee’s rules, and the determination of just how much weight to give to a Senator’s opposition to a nomination is left largely up to the chair of the committee. Among other issues, the chair will decide whether to honor the objections, voiced through blue-slips, from all home-state senators or just those who belong to the same party as the president.³⁸

When James O. Eastland (D-MS) chaired the Judiciary Committee from 1956 to 1978, his policy stated that if he did not get back two blue slips endorsing the nominee, the nomination would not move further in the process. Other chairs have said they would give blue slips strong consideration, but that a negative blue slip or one not returned by a Senator would not necessarily kill a nomination.³⁹ Some Senators have declined to return a completed blue slip to the committee in an effort to delay action on the nomination.

Some analysts have said that the blue slip process developed because the Senate needed to create a process by which Members could register their disapproval if a President did not involve them enough in the “advice phase” of a nomination. “The blue slip process is the sanction that a president faces for violating the norm of senatorial courtesy in the judicial appointment process,” wrote political scientist Brannon P. Denning⁴⁰

Senator Paul Laxalt (R-NV) in 1979, defended the blue-slip system in the Senate during a hearing on the process for confirming federal judges.

One means of effective scrutiny of a candidate is to seek the opinion of the U.S. Senators of his respective State. For this reason, I presume the committee will honor the blue-slip system that has worked so well in the past. This is not only a matter of senatorial courtesy but has on many occasions provided insight on a nominee not otherwise presented.⁴¹

Much also has been written that is critical of the blue-slip system. George Washington University law professor Jonathan Turley described the system this way: Blue-slipping is a little known process by which senators can block federal judge

nominees from their state. This means that judges who may rule in your case often are selected to meet senatorial, not professional, demands. By simply not returning blue slips sent by the Senate Judiciary Committee, a senator can block a nominee for the most nefarious or arbitrary reasons, including a personal grudge, a bargaining tool with the White House or failure of the nominee to be sufficiently fawning in the senator's presence.⁴²

³⁵ In the House, the concept of "blue-slipping" refers to the act of returning to the Senate a measure that the House believes has violated a clause of the Constitution requiring that all revenue raising measures originate in the House. For more information, see CRS Report RS21236, *Blue Slipping: The Origination Clause in the House of Representatives*, by James V. Saturno.

³⁶ National Archives and Records Administration, Record Group 46, Records of the U.S. Senate, 65th Cong., Records of Executive Proceedings, Nomination Files, Judiciary Committee, Robert P. Stewart, Blue Slip (1917). For additional information on the history of the blue slip, see CRS Report RL32013, *The History of the Blue Slip in the Senate Committee on the Judiciary, 1917-Present*.

³⁷ Available at [<http://www.usdoj.gov/olp/blueslips.htm>], visited Mar. 29, 2005.

³⁸ Binder, "The Senate as a Black Hole," pp. 37-40.

³⁹ Brannon P. Denning, "The Judicial Confirmation Process and the BLUE SLIP," *Judicature*, Mar.-Apr. 2002, p. 220.

⁴⁰ *Ibid.*, p. 223.

⁴¹ U.S. Congress, Senate Committee on the Judiciary, *The Selection and Confirmation of Federal Judges*, hearings, part 1, 96th Cong., 1st sess., Jan. 25, 1979 (Washington: GPO, 1979), p. 5.

⁴² Jonathan Turley, "Seeing Red on Blue Slips," *Los Angeles Times*, May 16, 2001, p. B-13.

⁴³ CRS Report 98-712, "*Holds*" in the Senate, by Walter J. Oleszek.

⁴⁴ *Ibid.*